Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	Petition for Declaratory Ruling
	)	of T-Mobile USA, Inc., *et al*
		(DA 02-2436)

REPLY COMMENTS OF GVNW CONSULTING, INC.

In response to the Commission's September 30, 2002, Public Notice (DA 02-2436) seeking comments on petitions for declaratory ruling regarding intercarrier compensation for wireless traffic, GVNW Consulting, Inc. (GVNW) respectfully presents its reply comments. GVNW Consulting, Inc. is a management-consulting firm, which provides a wide range of consulting services to independent telephone companies. We offer the following reply comments on the T-Mobile Petition for Declaratory Ruling.

SUMMARY OF GVNW REPLY COMMENTS

GVNW has reviewed the initial round of comments filed and believes that a careful reading of these comments from both wireless and ILEC commenters will provide the Commission a clear insight into the circumstances relating to CMRS carriers and small ILECs in relationship to indirect interconnection of their networks through the tandem switches of another ILEC. A careful review of these circumstances and the provisions of the Act should lead the Commission to a conclusion that the T-Mobile petition should be denied. Further, the Commission should require CMRS providers to

meet their obligations under the Act to negotiate reciprocal compensation agreements[1] for indirect interconnection and termination of traffic to ILECs and should cease to unilaterally impose bill and keep arrangements on those ILECs.

GVNW highlights the following issues that the Commission should focus on in reaching these decisions.

NATURE OF INDIRECT INTERCONNECTIONS

The Commission should recognize that the questions raised by the T-Mobile Petition and the tariffs that T-Mobile is addressing are directed specifically toward circumstances where the networks of the CMRS provider and the small ILECs are indirectly connected through the tandem switch of another LEC (normally an RBOC LEC). The CMRS traffic terminating to the small ILEC from the RBOC tandem is typically commingled with other traffic also terminating from that tandem. That traffic includes IXC traffic, both interLATA and intraLATA, from a variety of IXCs, RBOC terminating intraLATA traffic, other LEC terminating intraLATA traffic, along with CMRS terminating traffic from a number of CMRS providers. The information passed on the network gives the terminating ILEC no ability, at the switching location, to determine what carrier may be presenting the traffic and is responsible for compensating the terminating ILEC. A determination of who is responsible for the traffic can only be made after billing records are received from the RBOC tandem company (if they are received at all). Thus, the terminating ILECs don't have "bottleneck control" of these

[1] 47 U.S.C. § 251(b)(5)

facilities as suggested by one CMRS commenter, but instead they have no control over the traffic that arrives at their switches and simply terminate all the traffic received.

SECTION 251 AND 252 OBLIGATIONS AND REQUIREMENTS

Several of the CMRS commenters freely admit that the requirements of Sections 251 and 252 to negotiate and arbitrate agreements are time consuming, costly, and expensive, and that they have consequently not followed those requirements. They freely admit that instead of following these requirements that they have indirectly terminated traffic to ILECs without any agreements or contracts and without compensation. It is ironic then that they blame the ILECs for not following the requirements of Section 251 and 252. It is clear from reading these Sections that the Act contemplated that negotiations would be initiated by those seeking to use ILEC facilities. ILECs are the ones required to negotiate, not CMRS providers. Section 252 mediation and arbitration only applies to negotiations where the "…incumbent local exchange carrier receives a request for negotiation…."[2] It is clear from the comments that the reason, at least in most cases, why negotiations have not taken place between CMRS providers using indirect interconnection and small ILECs is due to the lack of such requests for negotiations from the CMRS carriers. They have negotiated with the RBOC for the direct interconnection to the RBOC tandem, but have failed to negotiate with the small ILECs whose switches subtend those tandems. Comments of some parties show that this is done in direct violation of state commission orders and/or their 251 interconnection contracts with the RBOCs.

[2] 47 U.S.C.§ 252(b)(1)

HISTORICAL, DEFAULT, DE FACTO BILL AND KEEP ARRANGEMENTS

The CMRS provider comments provide numerous cites to the historical, default, or defacto bill and keep arrangements currently in place. It is ironic that the CMRS providers frequently criticize the ILEC tariffs because they are "unilaterally" imposed, while failing to recognize that the root of the problem is the "unilateral" imposition of so-called bill and keep arrangements upon the ILECs through the use of indirect connections to these ILECs through the RBOC tandems. The Commission needs to recognize that these historical, default, de facto bill and keep arrangements have been unilaterally imposed by the CMRS providers in contravention of their responsibilities to negotiate agreements under the Act. It should be clear from the breadth of comments from ILEC commenters across the nation, that they exist not because they are satisfactory, but because of the difficulty of addressing this problem under the existing procedures and rules. Because the traffic arrives on their networks commingled with other traffic, the small ILECs may not know the extent of and/or which carriers are terminating traffic. The small ILECs have no control over the traffic that is terminating to them, so calls are completed and the CMRS providers thus have no incentive to fulfill their responsibilities under the Act. Their traffic is terminated and they pay nothing to the small ILECs for the use of their facilities to terminate the traffic. They have every incentive to unilaterally impose bill and keep arrangements, and none to negotiate. The cost of negotiating contracts, including possible arbitration is substantial, but much more so for small ILECS with revenue streams typically in the low millions of dollars compared with the CMRS providers whose revenues are measured in the multi-billion

dollar range. The small ILECs have frequently not sought to correct the situation because of the cost involved compared to the initial low volumes of traffic. However, with the extensive growth in CMRS service, small ILECs are now trying to rectify the unilaterally imposed bill and keep arrangements.

Some CMRS providers cite portions of Section 51.705 of the Commission's rules to support their unilateral imposition of bill and keep arrangements. However, Section 51.705 does not support this position. Section 51.705 clearly states options available, "…at the election of the state commission…", not for unilateral imposition by either ILECs or CMRS providers. Furthermore, Section 51.713 of the Commission's rules only allow a state commission to adopt such a provision if the traffic between the two carriers is "…roughly balanced…."[3] While Section 51.713(c) allows a state commission to presume a rough balance of traffic "…unless a party rebuts such presumption…" no such ability is given to CMRS providers, nor does the unilateral imposition of such provisions by a CMRS provider give the other party the ability to rebut that presumption. There is no justification in the Act or the Commission's rules for CMRS providers to unilaterally impose bill and keep obligations.

RECIPROCAL TRAFFIC

GVNW has represented small ILECs both in state tariff proceedings regarding indirect termination of CMRS traffic and in a number of negotiations between CMRS providers and small ILECs. One of the key issues that is often contested is the applicability of reciprocal compensation to intraMTA traffic carried by an IXC. In spite

[3] 47 C.F.R § 51.713(b).

of the fact that end users, via their presubscription choices, choose an IXC to carry traffic and purchase the service from the IXC; in spite of this Commission's and state commissions dialing parity rules, in spite of the fact that IXCs purchase the use of the ILECs access facilities under the ILEC access tariffs, and in spite of the Commission's determination in its First Report and Order in CC Docket No. 95-185 that reciprocal compensation does not apply to traffic carried by IXCs[4], CMRS providers routinely assert that small ILECs are responsible for reciprocal compensation for such traffic. The Commission should clarify once again that ILECs are not responsible for intraMTA traffic carried by IXCs.

SUMMARY

USTA suggests that the issues contained in the T-Mobile Petition should not be decided in the context of this declaratory ruling, but should be put off until the Commission fully addresses the issues in CC Docket No. 01-92. GVNW disagrees with this conclusion. The significant number of comments from groups of small ILECs around the country clearly indicate that this is an issue that should not be postponed until some distant time in the future. The Commission should deny the Petition of T-Mobile. Furthermore, the Commission should remind CMRS providers of their responsibilities under the Act when using indirect connections to small ILECs. In addition, the Commission should reiterate that small ILECs are not responsible for reciprocal compensation to CMRS providers for intraMTA traffic carried by IXCs.

[4] Comments in CC Docket No. 01-92 (DA 02-2436), Comments of John Staurulakis, Inc., pages 8 –11.

Respectfully submitted,

- *electronically filed*-

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